

California Debt and Investment Commission

Municipal Market Disclosure

Overview of Federal Laws and Securities and Exchange Commission Rules Governing Disclosure

April 5, 2011

by

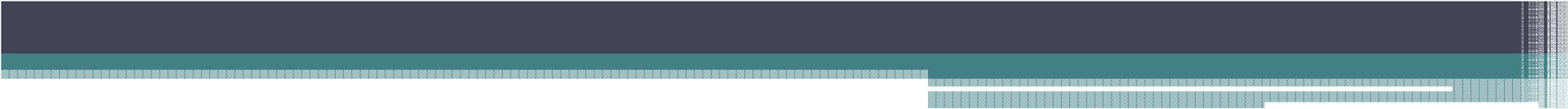
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I. Federal Securities Laws Applicable to Issuers of Municipal Securities

A. Securities Act of 1933

- Generally requires that all securities be registered with the SEC.
- Section 3(a) exempts securities issued or guaranteed by any state or any political subdivision of a state, among others, from registration with the SEC.
- Section 17(a) prohibits fraud in the offer or sale of securities – “It shall be unlawful for any person in the offer or sale of any securities by the use of any means . . . of . . . communication in interstate commerce or by the use of the mail, directly or indirectly.
 - (1) to employ any device, scheme or artifice to defraud, or
 - (2) to obtain money or property by means of *any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading*, or
 - (3) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.”



I. Federal Securities Laws Applicable to Issuers of Municipal Securities
(Continued)

B. Securities and Exchange Act of 1934

- Section 10(a) – “It shall be unlawful for any person, directly or indirectly, by the use of any means . . . of interstate commerce, or of the mails . . . to use or employ, in connection with the purchase or sale of any security . . . any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.”

I. Federal Securities Laws Applicable to Issuers of Municipal Securities

(Continued)

C. SEC Rule 10b-5

1. “Anti-Fraud Rule” – makes it “unlawful for any person, directly or indirectly, by the use of any means . . . of interstate commerce, or of the mails . . .
 - (a) to employ any device, scheme, or artifice to defraud,
 - (b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or
 - (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security.”

2. Discussions of Rule 10b-5

- Whatever you do say, be accurate.
- Don't leave any material information out if it would change the nature of what has been said.
- Applies to both initial disclosure in the official statement and Continuing Disclosure under SEC Rule 15c2-12, discussed below.
- SEC repeated in its August 2010 Order against State of New Jersey its long-stated position that Rule 10b-5 also applies to “[continuing] disclosure and to any other statements to the market.”

3. What is Material?

Supreme Court says: A statement or omission is material

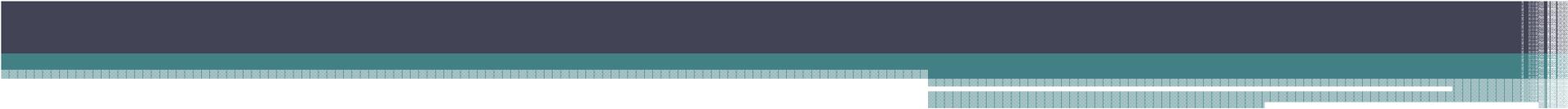
- “if there is a substantial likelihood that a reasonable [not “any”] investor would [not “could”] consider it important [not “interesting”] in making the decision to purchase or sell the securities.”
- “there is substantial likelihood that having the information would have been viewed by the reasonably investor as having significantly altered the total mix of information available.”

4. Elements of Materiality

- Unusual, Alarming, Worrisome
- Red Flags
- Probability Versus Magnitude
- In any SEC enforcement or other securities law proceeding the determination of what is “material” is made looking back and in light of any “bad” things which happened/developments after the original disclosure.

D. Legal Basis for Liability Under Rule 10b-5

- Intent to deceive, manipulate or defraud (“scienter”)
 - Intentional wrongdoing
 - Recklessness (“...an extreme departure from the standards of reasonable care”)
 - Knowledge can be what you should have known (i.e. you can’t be intentionally ignorant)



E. Elements of Recklessness

- Method of preparation of disclosure
- Refusal to see the obvious or to investigate the doubtful
- It's in the process

II. SEC Rule 15c2-12

Regulates Initial and Continuing Disclosure

A. Initial Disclosure

- Preliminary Official Statement (POS)
 - Issuer is ultimately responsible to assure accuracy and full disclosure
 - Terms of the securities
 - Financial information or operating data material to making an evaluation to invest in the securities
 - Participating Underwriter(s) must obtain and review a “deemed final” official statement prior to the bid, purchase or sale of municipal securities
- Official Statement (OS)
 - Same as the POS, except it includes pricing information
 - Delivered to the Participating Underwriter(s) within seven business days following date of pricing and/or execution and purchase contract and in time to accompany buyer confirmations

II. SEC Rule 15c2-12 (Continued)

B. Continuing Disclosure

1. Original 1996 Rule Requiring Continuing Disclosure (Rule 15c2-12(b)(5))

- Applies to issues > \$1 million.
- Adopted by the SEC pursuant to its regulatory authority of **Underwriters**.
- Effective July 3, 1996.
- Required Issuers to file Annual Reports disclosing financial and operating information specified in a written continuing disclosure undertaking (CDU), including audited financial statements.
- Required Issuers to file Notices of the occurrence of certain Specified Events, if material.
- A complete copy of the Rule is attached as Exhibit I.

II. SEC Rule 15c2-12 (Continued)

2. 2008 Amendment to Rule 15c2-12(b)(5) Requiring Filing with EMMA

- Effective July 1, 2009
- Required Issuers to make all filings in electronic form through the Electronic Municipal Market Access (EMMA) System maintained by the Municipal Securities Rulemaking Board (MSRB)

II. SEC Rule 15c2-12 (Continued)

3. 2010 Amendments to Rule 15c2-12(b)(5)

- Effective December 1, 2010 – applies to all municipal securities that closed on or after December 1, 2010
- Requires Issuers to file Notices within 10 Business Days following the **occurrence** of certain Specified Events
- Modifies six Specified Events to require filing of Notices upon occurrence, **regardless of materiality**
- Adds four additional Specified Events to be disclosed

II. SEC Rule 15c2-12 (Continued)

- Adds two additional Specified Events to be disclosed, *if material*
- Variable Rate Demand Obligations issued on or after December 1, 2010 are *no longer exempt* from continuing disclosure obligations

Summary of Rule 15c2-12(b)(5) Requirements to Report Specified Events

Description of Specified Event	Original Reporting Requirements Effective July 3, 1996	New Reporting Requirements For All Municipal Securities Issued on or After December 1, 2010
Principal and interest payment delinquencies	If Material	Report without regard to materiality
Non-payment related defaults	If Material	If Material
Unscheduled draws on debt service reserves reflecting financial difficulties	If Material	Report without regard to materiality
Unscheduled draws on credit enhancements reflecting financial difficulties	If Material	Report without regard to materiality
Substitution of credit or liquidity providers, or their failure to perform	If Material	Report without regard to materiality
Tax status issues	If material, report adverse tax opinions or events affecting the tax-exempt status of the security.	Report any of the following, without regard to materiality: adverse tax opinions, the issuance by the IRS of proposed or final determinations of taxability, notices of Proposed Issue (IRS Form 5701-TEB), or other material notices or determinations with respect to the tax status of the security Report, if material, any events affecting the tax status of the security (including Build America Bonds)
Modifications to rights of security holders	If Material	If Material
Bond calls	If Material	If Material
Defeasances	If Material	Report without regard to materiality
Release, substitution, or sale of property securing repayment of the securities	If Material	If Material
Rating changes	If Material	Report without regard to materiality
Failure to file Annual Report by deadline	Report without regard to materiality	Report without regard to materiality
Tender offers	N/A	Report without regard to materiality
Bankruptcy, insolvency, receivership or similar event of the obligated person	N/A	Report without regard to materiality
Consummation of a merger, consolidation, or acquisition involving an obligated person, or the sale of all or substantially all the assets of the obligated person, other than in the ordinary course of business, the entry of a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms	N/A	If Material
Appointment of a successor or additional trustee or the change of name of a trustee	N/A	If Material

II. SEC Rule 15c2-12 (Continued)

4. Consequences of Failure to Comply with Continuing Disclosure Undertaking

- Issuers are required to make the missing filings and disclose for **5 years** in all of its Official Statements all failures to comply, in all material respects, with previous obligations to provide continuing disclosure
- SEC emphasized in the adoption of the December 1, 2010 amendments that Underwriters may be prohibited by the Rule from buying bonds of a municipality that has “on multiple occasions during past five years failed to provide on timely basis” annual and events notices required by the Rule

II. SEC Rule 15c2-12 (Continued)

5. Issuers should Establish and Follow a Disclosure Process

- Establish a Disclosure Team with Responsibility for Monitoring and Preparing initial Official Statement and Continuing Disclosure
- Each year review the requirements in each Continuing Disclosure Undertaking (CDU)
- Consider whether to include information beyond what specified in the CDU

II. SEC Rule 15c2-12 (Continued)

- If necessary to make what is filed not misleading. SEC has stated the 10b-5 disclosure obligations of an Issuer requiring that disclosure be accurate and complete (*i.e.* do not omit any information if inclusion of such information would change the nature of what has been presented) applies to annual filings
- If desirable to maintain favorable relationship with investors
- Gather the required information

II. SEC Rule 15c2-12 (Continued)

- Coordinate, Review and Approve
- Finalize the Information for filing with EMMA

6. Continuing Disclosure Undertaking

- Example of CDU reflecting December 1, 2010 amendments, see Exhibit II
- Discussion of example CDU
 - Incorporation of new December 1, 2010 requirements
 - Other provisions

III. SEC ENFORCEMENT ACTIONS AGAINST ISSUERS

OVERVIEW

- A. *SEC Report of Investigation in the Matter of County of Orange, California as it Relates to the Conduct of the Members of the Board of Supervisors*, SEC Release No. 367 61 (January 24, 1996).

The SEC issued this Report:

“to emphasize the responsibilities under the federal securities laws of local governmental officials who authorize the issuance of municipal securities and the related disclosure documents.... Public entities that issue securities are primarily liable for the content of their disclosure documents and are subject to proscriptions under the federal securities laws against false and misleading information in their disclosure documents”.
(Emphasis added.)

III. SEC ENFORCEMENT ACTIONS AGAINST ISSUERS

(Continued)

In this Report, the SEC stated:

- The Orange County Board of Supervisors were aware of the financial condition of the County including its reliance on income from County Investment Pools to balance its discretionary budget, but the Supervisors approved official statements for various bond issues without disclosing this information.
- The Supervisors had a duty to take appropriate steps to assure accurate disclosure to investors regarding this information, which was material because it brought into question the County's ability to repay its bonds without significant income from the County Investment Pools, but Supervisors failed to make this disclosure.

III. SEC ENFORCEMENT ACTIONS AGAINST ISSUERS

(Continued)

- Since 1991, the County Treasurer had to submit monthly reports of investment transactions to the Supervisors as required by law and, as a result, the Supervisors did not have sufficient information regarding the investment of County funds and its ability to repay bonds.
- These omitted facts were material because the County's changed financial condition and the use of bond proceeds to alleviate the County's cash flow deficit "would have been important for an investor to consider in deciding whether or not to purchase the County's GO Bonds."

III. SEC ENFORCEMENT ACTIONS AGAINST ISSUERS

(Continued)

- B. *In the Matter of the City of Miami, Florida, Opinion of the Commission*, SEC Release Nos. 33-8213 and 34-47522 and Administrative Proceeding File No. 3-10022 (March 21, 2003).

The City of Miami appealed to the SEC the decision of the SEC's Administrative Law Judge which found the City had willfully violated federal securities law.

III. SEC ENFORCEMENT ACTIONS AGAINST ISSUERS

(Continued)

- In upholding the decision, the SEC found:
 - The City of Miami had willfully failed to disclose to investors its cash flow problem and the consequent possibility that City could not meet its operating expenses and gave the misleading impression that the City was taking steps to improve its financial position in connection with three G.O. Bond offerings in 1995.
 - Rejected City’s argument that City was excused from disclosing its cash flow problems because City’s outside auditors did not issue a “going concern” qualification in their audit report and the balanced budget summary included in the official statements was not a material misrepresentation because the summary reflected historical information.

III. SEC ENFORCEMENT ACTIONS AGAINST ISSUERS

(Continued)

- The City’s cash flow crisis and possible inability to meet its operating expenses would be material to a reasonable investor, reiterated SEC position the City had “primary responsibility” for the accuracy of its official statements and; City did “not discharge this obligation by employment of independent accountants or other professionals” and was “at least reckless” in misstating in official statements that City’s 1995 budget was balanced and failing to disclose that City needed to issue debt to resolve its cash flow crisis, and misrepresenting there were no material changes to its financial condition.
- SEC issued a Cease and Desist Order against the City.

III. SEC ENFORCEMENT ACTIONS AGAINST ISSUERS

(Continued)

C. *In the Matter of City of San Diego, California, Order Instituting Cease-and-Desist Proceedings, Making Findings, and Imposing a Cease-and-Desist Order*, SEC Release Nos. 8751, 54745 (November 14, 2006) and Administrative Proceeding File No. 3-12478.

- SEC found:
 - The City of San Diego made false and misleading disclosures regarding its pension and retiree health care obligations in connection with five City bond offerings during 2002 and 2003.

III. SEC ENFORCEMENT ACTIONS AGAINST ISSUERS

(Continued)

- The City’s disclosure in these five official statements, and in an annual continuing disclosure statement and in its presentations to the rating agencies were all misleading.
- The City acted with scienter when it omitted from the five official statements material information regarding the under-funding of its pension and retiree health care funds.
- City officials knew (or were reckless in not knowing) its disclosures were misleading, which constituted “scienter.”

III. SEC ENFORCEMENT ACTIONS AGAINST ISSUERS

(Continued)

- The SEC recognized the City subsequently undertook several remedial measures to detect and prevent future securities laws violations, including terminating certain officials, hiring a municipal securities attorney, hiring new outside professionals and enacting ordinances designed to change the City's disclosure practices.
- The SEC's Cease-and-Desist Order required the City to: (1) retain an independent consultant within 60 days to conduct annual reviews of City's policies, procedures and internal controls regarding disclosures for bond offerings, make recommendations regarding policies and assess City's compliance; and (2) to implement those recommendations.

III. SEC ENFORCEMENT ACTIONS AGAINST ISSUERS

(Continued)

D. *In the Matter of the State of New Jersey, Order Instituting Cease-and-Desist Proceedings, Making Findings and Imposing a Ceased-and-Desist Order*, SEC Release No. 9135 (August 18, 2010) and Administrative Proceeding File No. 3-14009

- SEC found:

State of New Jersey violated Section 17 (a) of the Securities Acts in connection with the sale of over 79 municipal bond offerings from 2001 to 2007 because the State misrepresented and failed to disclose material information regarding its under-funding of two State pension plans

III. SEC ENFORCEMENT ACTIONS AGAINST ISSUERS

(Continued)

- Failures included not disclosing: market value of pension assets, official reports criticizing funding of pensions, lack of State contributions, history (at least five years) of contributions, ratio of UAAL as a percentage of payroll and actuarial method used.
- SEC bringing enforcement action under Section 17(a) is significant because liability is based on negligence and not (as is required under Rule 10b-5) “scienter.”
- **WE URGE READING** the entire SEC Order against State of New Jersey indicating the SEC’s view of required pension disclosure.
- All SEC Orders are available at <http://www.sec.gov/litigation.shtml>

III. SEC ENFORCEMENT ACTIONS AGAINST ISSUERS

(Continued)

- SEC's Order stated the State Treasurers, who were responsible for issuing State bonds, did not read the State's official statements and relied upon their staff to ensure their accuracy. However, SEC did not criticize the State Treasurers for not themselves reading the official statements, but did criticize lack of disclosure policies and procedures of the State Treasurers.
- In the deciding to accept the State's offer of settlement, the SEC considered the remedial actions taken by the State subsequent to April, 2007 including: hiring outside disclosure counsel, evaluating and enhancing State's disclosure process by instituting formal, written policies and procedures, establishing a committee (of senior treasury officials, representatives from the attorney general's office and disclosure counsel) to oversee the disclosure process, and instituting annual mandatory training by disclosure counsel of State employees responsible for disclosure.

III. SEC ENFORCEMENT ACTIONS AGAINST ISSUERS

(Continued)

E. INDIVIDUAL MUNICIPAL OFFICIALS CAN BE FINED BY SEC

- **SEC Has Obtained \$25,000 Penalties Against Each of Four Former City of San Diego Officials.**
 - SEC brought law suits in April, 2008 against the former City Manager, City Auditor and Comptroller, Deputy City Manager for Finance, Assistant City Auditor and Comptroller and City Treasurer of the City of San Diego and sought monetary penalties.
 - In October 2010 four of these individual defendants entered into consent judgments with the SEC and each agreed to pay a \$25,000 civil fine (\$5,000 in one case) and also agreed not to be reimbursed from the City or any other source for this fine.
 - The fifth lawsuit against the former City Assistant Auditor and Comptroller is pending with trial set for July 2011.

III. SEC ENFORCEMENT ACTIONS AGAINST ISSUERS

(Continued)

F. SEC Can Now Itself Impose Fines Against Individual Municipal Employees For Their Violations Of Federal Securities Laws In Connection With Municipal Bonds.

- Previously, the SEC could imposed fines on individuals only by instituting a lawsuit in federal district court and obtaining a court judgement.
- In the Dodd-Frank Wall Street Reform and Consumer Protection Financial Protection Act of 2010, Congress gave SEC new authority to impose monetary penalties in administrative proceedings conducted by SEC on any person (including municipal officials) who the SEC determined has violated federal securities laws.
 - These penalties on individuals can range from \$7,500 to \$150,000 for each violation.

III. SEC ENFORCEMENT ACTIONS AGAINST ISSUERS

(Continued)

- As one commentator observed: “It seems likely that this change could result in a shift of SEC enforcement actions against issuers, officers... and others, from courts to administrative proceedings.”

IV. Questions Regarding the 2010 Amendments to Rule 15c2-12

- What is a “rating change” which triggers filing of an Event Notice?
- What if the Issuer does not receive notification of a rating change?
- How does the Issuer know if its ratings have changed?
- What investigation/audit by the IRS must be disclosed in an Event Notice?
- What non-payment defaults are immaterial and are not required to be disclosed?
- Must an Event Notice be filed describing mandatory sinking fund redemption?

Discussion Questions

- How does the Issuer know if the Trustee changes its name or sells its trust operations to successor?
- Why only 10 business days to provide Event Notices? That seems short.
- Did the SEC consider the additional burdens the Rule imposes on Issuers to monitor for occurrence of the Specified Events?

Exhibit I - § 240.15c2-12 Municipal securities disclosure.

(a) *General.* As a means reasonably designed to prevent fraudulent, deceptive, or manipulative acts or practices, it shall be unlawful for any broker, dealer, or municipal securities dealer (a “Participating Underwriter” when used in connection with an Offering) to act as an underwriter in a primary offering of municipal securities with an aggregate principal amount of \$1,000,000 or more (an “Offering”) unless the Participating Underwriter complies with the requirements of this section or is exempted from the provisions of this section.

(b) *Requirements.*

(1) Prior to the time the Participating Underwriter bids for, purchases, offers, or sells municipal securities in an Offering, the Participating Underwriter shall obtain and review an official statement that an issuer of such securities deems final as of its date, except for the omission of no more than the following information: The offering price(s), interest rate(s), selling compensation, aggregate principal amount, principal amount per maturity, delivery dates, any other terms or provisions required by an issuer of such securities to be specified in a competitive bid, ratings, other terms of the securities depending on such matters, and the identity of the underwriter(s).

(2) Except in competitively bid offerings, from the time the Participating Underwriter has reached an understanding with an issuer of municipal securities that it will become a Participating Underwriter in an Offering until a final official statement is available, the Participating Underwriter shall send no later than the next business day, by first-class mail or other equally prompt means, to any potential customer, on request, a single copy of the most recent preliminary official statement, if any.

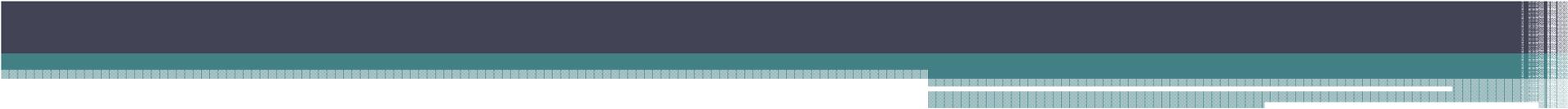
(3) The Participating Underwriter shall contract with an issuer of municipal securities or its designated agent to receive, within seven business days after any final agreement to purchase, offer, or sell the municipal securities in an Offering and in sufficient time to accompany any confirmation that requests payment from any customer, copies of a final official statement in sufficient quantity to comply with paragraph (b)(4) of this rule and the rules of the Municipal Securities Rulemaking Board.

(4) From the time the final official statement becomes available until the earlier of—

(i) Ninety days from the end of the underwriting period or

(ii) The time when the official statement is available to any person from the Municipal Securities Rulemaking Board, but in no case less than twenty-five days following the end of the underwriting period, the Participating Underwriter in an Offering shall send no later than the next business day, by first-class mail or other equally prompt means, to any potential customer, on request, a single copy of the final official statement.

(5)(i) A Participating Underwriter shall not purchase or sell municipal securities in connection with an Offering unless the Participating Underwriter has reasonably determined that an issuer of municipal securities, or an obligated person for whom financial or operating data is presented in the final official statement has undertaken, either individually or in combination with other issuers of such municipal securities or obligated persons, in a written agreement or contract for the benefit of holders of such securities, to provide the following to the Municipal Securities Rulemaking Board in an electronic format as prescribed by the Municipal Securities Rulemaking Board, either directly or indirectly through an indenture trustee or a designated agent:

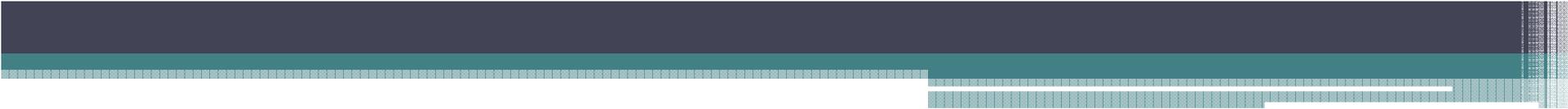


(A) Annual financial information for each obligated person for whom financial information or operating data is presented in the final official statement, or, for each obligated person meeting the objective criteria specified in the undertaking and used to select the obligated persons for whom financial information or operating data is presented in the final official statement, except that, in the case of pooled obligations, the undertaking shall specify such objective criteria;

(B) If not submitted as part of the annual financial information, then when and if available, audited financial statements for each obligated person covered by paragraph (b)(5)(i)(A) of this section;

(C) In a timely manner not in excess of ten business days after the occurrence of the event, notice of any of the following events with respect to the securities being offered in the Offering:

- (1) Principal and interest payment delinquencies;
- (2) Non-payment related defaults, if material;
- (3) Unscheduled draws on debt service reserves reflecting financial difficulties;
- (4) Unscheduled draws on credit enhancements reflecting financial difficulties;
- (5) Substitution of credit or liquidity providers, or their failure to perform;



(6) Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701–TEB) or other material notices or determinations with respect to the tax status of the security, or other material events affecting the tax status of the security;

(7) Modifications to rights of security holders, if material;

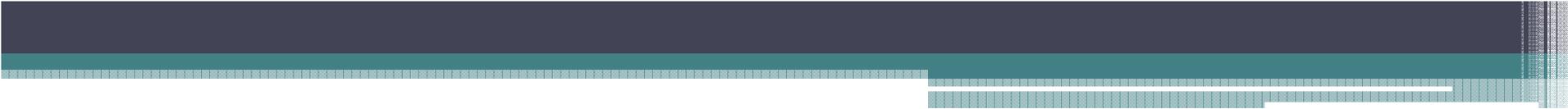
(8) Bond calls, if material, and tender offers;

(9) Defeasances;

(10) Release, substitution, or sale of property securing repayment of the securities, if material;

(11) Rating changes;

(12) Bankruptcy, insolvency, receivership or similar event of the obligated person;

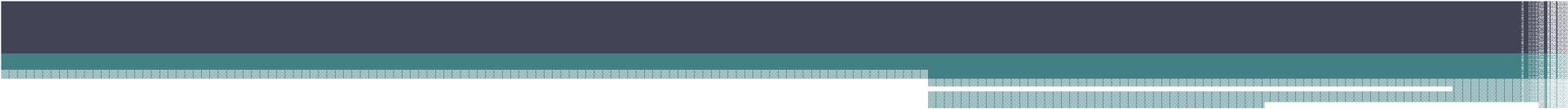


Note to paragraph (b)(5)(i)(C)(12): For the purposes of the event identified in paragraph (b)(5)(i)(C)(12) of this section, the event is considered to occur when any of the following occur: The appointment of a receiver, fiscal agent or similar officer for an obligated person in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the obligated person, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the obligated person.

(13) The consummation of a merger, consolidation, or acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;

(14) Appointment of a successor or additional trustee or the change of name of a trustee, if material; and

(D) In a timely manner, notice of a failure of any person specified in paragraph (b)(5)(i)(A) of this section to provide required annual financial information, on or before the date specified in the written agreement or contract.



(ii) The written agreement or contract for the benefit of holders of such securities also shall identify each person for whom annual financial information and notices of material events will be provided, either by name or by the objective criteria used to select such persons, and, for each such person shall:

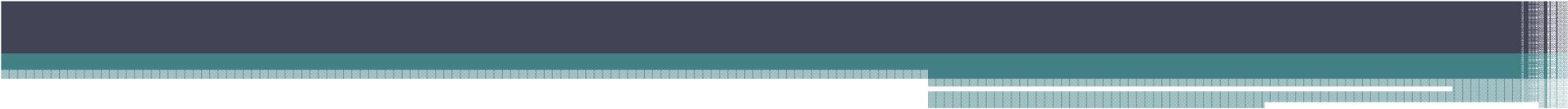
(A) Specify, in reasonable detail, the type of financial information and operating data to be provided as part of annual financial information;

(B) Specify, in reasonable detail, the accounting principles pursuant to which financial statements will be prepared, and whether the financial statements will be audited; and

(C) Specify the date on which the annual financial information for the preceding fiscal year will be provided.

(iii) Such written agreement or contract for the benefit of holders of such securities also may provide that the continuing obligation to provide annual financial information and notices of events may be terminated with respect to any obligated person, if and when such obligated person no longer remains an obligated person with respect to such municipal securities.

(iv) Such written agreement or contract for the benefit of holders of such securities also shall provide that all documents provided to the Municipal Securities Rulemaking Board shall be accompanied by identifying information as prescribed by the Municipal Securities Rulemaking Board.



(c) *Recommendations.* As a means reasonably designed to prevent fraudulent, deceptive, or manipulative acts or practices, it shall be unlawful for any broker, dealer, or municipal securities dealer to recommend the purchase or sale of a municipal security unless such broker, dealer, or municipal securities dealer has procedures in place that provide reasonable assurance that it will receive prompt notice of any event disclosed pursuant to paragraph (b)(5)(i)(C), paragraph (b)(5)(i)(D), and paragraph (d)(2)(ii)(B) of this section with respect to that security.

(d) *Exemptions.*

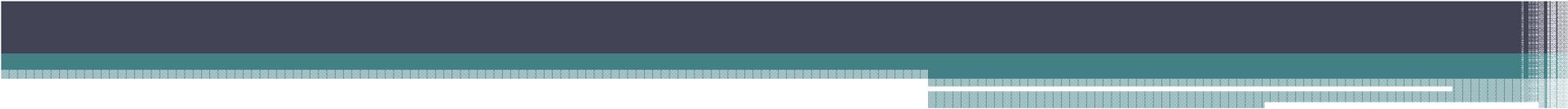
(1) This section shall not apply to a primary offering of municipal securities in authorized denominations of \$100,000 or more, if such securities:

(i) Are sold to no more than thirty-five persons each of whom the Participating Underwriter reasonably believes:

(A) Has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of the prospective investment; and

(B) Is not purchasing for more than one account or with a view to distributing the securities; or

(ii) Have a maturity of nine months or less.



(2) Paragraph (b)(5) of this section shall not apply to an Offering of municipal securities if, at such time as an issuer of such municipal securities delivers the securities to the Participating Underwriters:

(i) No obligated person will be an obligated person with respect to more than \$10,000,000 in aggregate amount of outstanding municipal securities, including the offered securities and excluding municipal securities that were offered in a transaction exempt from this section pursuant to paragraph (d)(1) of this section;

(ii) An issuer of municipal securities or obligated person has undertaken, either individually or in combination with other issuers of municipal securities or obligated persons, in a written agreement or contract for the benefit of holders of such municipal securities, to provide the following to the Municipal Securities Rulemaking Board in an electronic format as prescribed by the Municipal Securities Rulemaking Board:

(A) At least annually, financial information or operating data regarding each obligated person for which financial information or operating data is presented in the final official statement, as specified in the undertaking, which financial information and operating data shall include, at a minimum, that financial information and operating data which is customarily prepared by such obligated person and is publicly available; and

(B) In a timely manner not in excess of ten business days after the occurrence of the event, notice of events specified in paragraph (b)(5)(i)(C) of this section with respect to the securities that are the subject of the Offering; and

(C) Such written agreement or contract for the benefit of holders of such securities also shall provide that all documents provided to the Municipal Securities Rulemaking Board shall be accompanied by identifying information as prescribed by the Municipal Securities Rulemaking Board; and

(iii) The final official statement identifies by name, address, and telephone number the persons from which the foregoing information, data, and notices can be obtained.

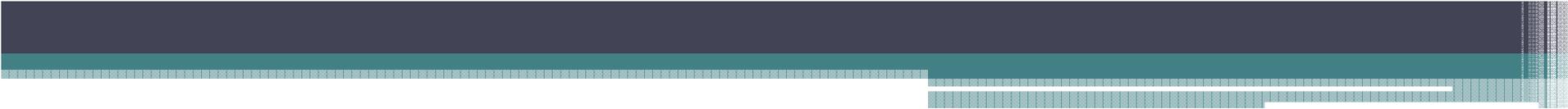
(3) The provisions of paragraph (b)(5) of this section, other than paragraph (b)(5)(i)(C) of this section, shall not apply to an Offering of municipal securities, if such municipal securities have a stated maturity of 18 months or less.

(4) The provisions of paragraph (c) of this section shall not apply to municipal securities:

(i) Sold in an Offering to which paragraph (b)(5) of this section did not apply, other than Offerings exempt under paragraph (d)(2)(ii) of this section; or

(ii) Sold in an Offering exempt from this section under paragraph (d)(1) of this section.

(5) With the exception of paragraphs (b)(1) through (b)(4), this section shall apply to a primary offering of municipal securities in authorized denominations of \$100,000 or more if such securities may, at the option of the holder thereof, be tendered to an issuer of such securities or its designated agent for redemption or purchase at par value or more at least as frequently as every nine months until maturity,

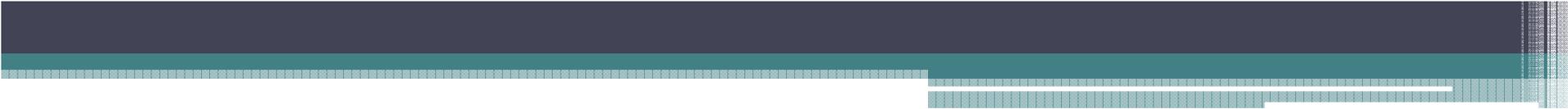


earlier redemption, or purchase by an issuer or its designated agent; provided, however, that paragraphs (b)(5) and (c) of this section shall not apply to such securities outstanding on November 30, 2010, for so long as they continuously remain in authorized denominations of \$100,000 or more and may, at the option of the holder thereof, be tendered to an issuer of such securities or its designated agent for redemption or purchase at par value or more at least as frequently as every nine months until maturity, earlier redemption, or purchase by an issuer or its designated agent.

(e) *Exemptive authority.* The Commission, upon written request, or upon its own motion, may exempt any broker, dealer, or municipal securities dealer, whether acting in the capacity of a Participating Underwriter or otherwise, that is a participant in a transaction or class of transactions from any requirement of this section, either unconditionally or on specified terms and conditions, if the Commission determines that such an exemption is consistent with the public interest and the protection of investors.

(f) *Definitions.* For the purposes of this rule—

(1) The term *authorized denominations of \$100,000 or more* means municipal securities with a principal amount of \$100,000 or more and with restrictions that prevent the sale or transfer of such securities in principal amounts of less than \$100,000 other than through a primary offering; except that, for municipal securities with an original issue discount of 10 percent or more, the term means municipal securities with a minimum purchase price of \$100,000 or more and with restrictions that prevent the sale or transfer of such securities, in principal amounts that are less than the original principal amount at the time of the primary offering, other than through a primary offering.



(2) The term *end of the underwriting period* means the later of such time as

(i) The issuer of municipal securities delivers the securities to the Participating Underwriters
or

(ii) The Participating Underwriter does not retain, directly or as a member or an underwriting syndicate, an unsold balance of the securities for sale to the public.

(3) The term *final official statement* means a document or set of documents prepared by an issuer of municipal securities or its representatives that is complete as of the date delivered to the Participating Underwriter(s) and that sets forth information concerning the terms of the proposed issue of securities; information, including financial information or operating data, concerning such issuers of municipal securities and those other entities, enterprises, funds, accounts, and other persons material to an evaluation of the Offering; and a description of the undertakings to be provided pursuant to paragraph (b)(5)(i), paragraph (d)(2)(ii), and paragraph (d)(2)(iii) of this section, if applicable, and of any instances in the previous five years in which each person specified pursuant to paragraph (b)(5)(ii) of this section failed to comply, in all material respects, with any previous undertakings in a written contract or agreement specified in paragraph (b)(5)(i) of this section. Financial information or operating data may be set forth in the document or set of documents, or may be included by specific reference to documents available to the public on the Municipal Securities Rulemaking Board's Internet Web site or filed with the Commission.

(4) The term *issuer of municipal securities* means the governmental issuer specified in section 3(a)(29) of the Act and the issuer of any separate security, including a separate security as defined in rule 3b-5(a) under the Act.

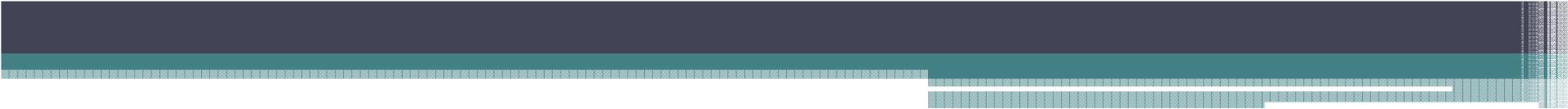
(5) The term *potential customer* means (i) Any person contacted by the Participating Underwriter concerning the purchase of municipal securities that are intended to be offered or have been sold in an offering, (ii) Any person who has expressed an interest to the Participating Underwriter in possibly purchasing such municipal securities, and (iii) Any person who has a customer account with the Participating Underwriter.

(6) The term *preliminary official statement* means an official statement prepared by or for an issuer of municipal securities for dissemination to potential customers prior to the availability of the final official statement.

(7) The term *primary offering* means an offering of municipal securities directly or indirectly by or on behalf of an issuer of such securities, including any remarketing of municipal securities.

(i) That is accompanied by a change in the authorized denomination of such securities from \$100,000 or more to less than \$100,000, or

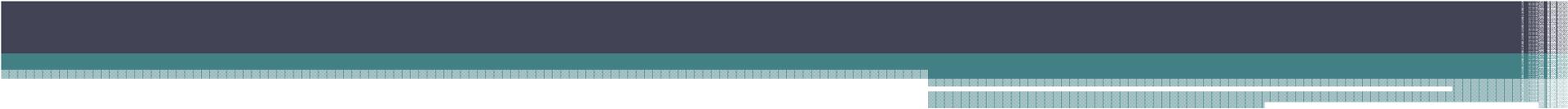
(ii) That is accompanied by a change in the period during which such securities may be tendered to an issuer of such securities or its designated agent for redemption or purchase from a period of nine months or less to a period of more than nine months.



(8) The term *underwriter* means any person who has purchased from an issuer of municipal securities with a view to, or offers or sells for an issuer of municipal securities in connection with, the offering of any municipal security, or participates or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking; except, that such term shall not include a person whose interest is limited to a commission, concession, or allowance from an underwriter, broker, dealer, or municipal securities dealer not in excess of the usual and customary distributors' or sellers' commission, concession, or allowance.

(9) The term *annual financial information* means financial information or operating data, provided at least annually, of the type included in the final official statement with respect to an obligated person, or in the case where no financial information or operating data was provided in the final official statement with respect to such obligated person, of the type included in the final official statement with respect to those obligated persons that meet the objective criteria applied to select the persons for which financial information or operating data will be provided on an annual basis. Financial information or operating data may be set forth in the document or set of documents, or may be included by specific reference to documents available to the public on the Municipal Securities Rulemaking Board's Internet Web site or filed with the Commission.

(10) The term *obligated person* means any person, including an issuer of municipal securities, who is either generally or through an enterprise, fund, or account of such person committed by contract or other arrangement to support payment of all, or part of the obligations on the municipal securities to be sold in the Offering (other than providers of municipal bond insurance, letters of credit, or other liquidity facilities).



(g) *Transitional provision.* If on July 28, 1989, a Participating Underwriter was contractually committed to act as underwriter in an Offering of municipal securities originally issued before July 29, 1989, the requirements of paragraphs (b)(3) and (b)(4) shall not apply to the Participating Underwriter in connection with such an Offering. Paragraph (b)(5) of this section shall not apply to a Participating Underwriter that has contractually committed to act as an underwriter in an Offering of municipal securities before July 3, 1995; *except that* paragraph (b)(5)(i)(A) and paragraph (b)(5)(i)(B) shall not apply with respect to fiscal years ending prior to January 1, 1996. Paragraph (c) shall become effective on January 1, 1996. Paragraph (d)(2)(ii) and paragraph (d)(2)(iii) of this section shall not apply to an Offering of municipal securities commencing prior to January 1, 1996.

[54 FR 28813, July 10, 1989, as amended at 59 FR 59609, Nov. 17, 1994; 73 FR 76132, Dec. 15, 2008; 75 FR 33155, June 10, 2010]

EXHIBIT II - FORM OF CONTINUING DISCLOSURE UNDERTAKING

This Continuing Disclosure Undertaking (the “Disclosure Undertaking”), dated as of [DATE] is executed and delivered by the [NAME OF ISSUER] (the “Issuer”) in connection with its issuance of \$XXX aggregate principal amount of [NAME OF SECURITIES] (the “Bonds”). The Bonds are being issued pursuant to an Indenture, dated as of [DATE] (the “Indenture”), by and between the Issuer and [NAME OF TRUSTEE] (the “Trustee”). The Issuer hereby covenants and agrees as follows:

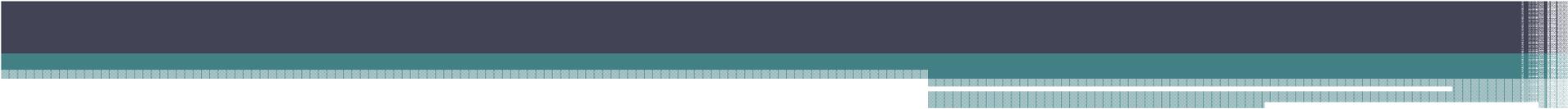
SECTION 1. Purpose of the Disclosure Undertaking. This Disclosure Undertaking is being executed and delivered by the Issuer for the benefit of the Holders and Beneficial Owners of the Bonds and in order to assist the Participating Underwriters in complying with the Rule.

SECTION 2. Definitions. In addition to the definitions set forth in the Indenture, which apply to any capitalized term used in this Disclosure Undertaking unless otherwise defined in this Section, the following capitalized terms shall have the following meanings:

“Annual Filing” shall mean any Annual Filing provided by the Issuer pursuant to, and as described in, Sections 3 and 4 of this Disclosure Undertaking.

“Beneficial Owner” shall mean any person which (a) has the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, any Bonds (including persons holding Bonds through nominees, depositories or other intermediaries), or (b) is treated as the owner of any Bonds for federal income tax purposes.

“Dissemination Agent” shall mean the Issuer and any entity selected and retained by the Issuer or any successor thereto.



“Filing Date” means the last day of the [seventh] month following the end of each Fiscal Year of the Issuer (or the next succeeding business day if that day is not a business day), commencing with the Fiscal Year ending June 30, 20__.

“MSRB” means the Municipal Securities Rulemaking Board.

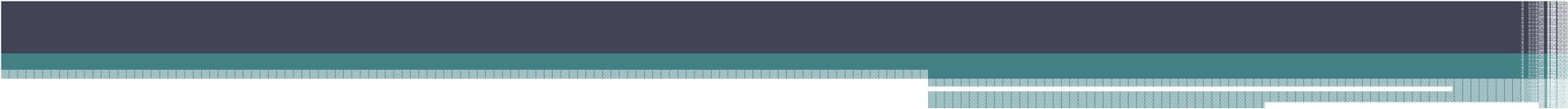
“Obligated Person” means, any person, including the issuer of municipal securities (such as the Bonds), who is generally committed by contract or other arrangement to support payment of all or part of the obligations on the municipal securities being sold in an offering document (such as the Official Statement). The Issuer is the only Obligated Person for the Bonds.

“Official Statement” means the final Official Statement, dated _____, 20__ relating to the Bonds.

“Participating Underwriters” shall mean any of the original underwriters of the Bonds required to comply with the Rule in connection with offering of the Bonds.

“Rule” shall mean Rule 15c2-12(b)(5) adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as the same may be amended from time to time and including any official interpretations thereof issued either before or after the effective date of this Disclosure Undertaking which are applicable to this Disclosure Undertaking.

“Specified Events” shall mean any of the events listed in Section 5(a) or 5(b) of this Disclosure Undertaking and any other event legally required to be reported pursuant to the Rule.



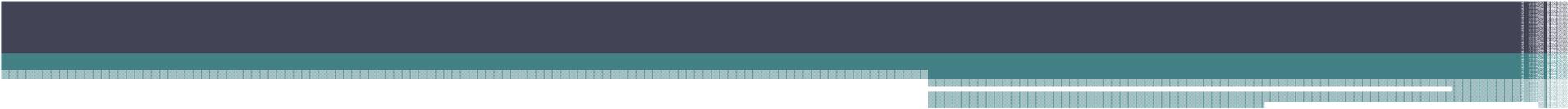
SECTION 3. Provision of Annual Filing.

(a) The Issuer shall provide (or cause to be provided) not later than the Filing Date to the MSRB an Annual Filing which is consistent with the requirements of Section 4 of this Disclosure Undertaking. The Annual Filing shall be submitted in an electronic format, and be accompanied by such identifying information, as is prescribed by the MSRB, and may be submitted as a single document or as separate documents comprising a package, and may cross-reference other information as provided in Section 4. If the Issuer's Fiscal Year changes, it shall give notice of such change in the same manner as for a Specified Event under Section 5.

(b) As of the date of this Disclosure Undertaking, the format prescribed by the MSRB is electronic submission through the Electronic Municipal Market Access ("EMMA") system. Information regarding submissions to EMMA is available at emma.msrb.org.

(c) If the Issuer fails to provide to the MSRB an Annual Filing by the Filing Date, the Issuer shall promptly send a notice to the MSRB of such failure in an electronic format, and accompanied by such identifying information as is prescribed by the MSRB.

(d) Not later than 15 Business Days prior to the Filing Date, the Issuer shall provide the Annual Filing to the Dissemination Agent (if one has been appointed). The Dissemination Agent (if one has been appointed) shall file a report with the Issuer certifying that the Annual Filing has been provided pursuant to this Disclosure Undertaking and stating the date it was provided to the MSRB.



SECTION 4. Content of Annual Filings. The Issuer's Annual Filing shall contain or include by reference the following:

(a) The audited financial statements of the Issuer for the prior Fiscal Year, prepared in accordance with generally accepted accounting principles as promulgated to apply to governmental entities from time to time by the Governmental Accounting Standards Board and reporting standards as set forth by the State Controller in "State of California Accounting Standards and Procedures for Counties", except as may be modified from time to time and described in such financial statements. If the Issuer's audited financial statements are not available by the Filing Date, the Annual Filing shall contain unaudited financial statements in a format similar to the financial statements contained in the Official Statement, and the audited financial statements shall be filed in the same manner as the Annual Filing when they become available.

(b) An update (as of the most recently ended Fiscal Year of the Issuer) for the following tables:
[Titles of tables to be updated]

Any or all of the items listed above may be included by specific reference to other documents, including official statements of debt issues with respect to which the Issuer is an Obligated Person, and which have been filed with the MSRB. If the document included by reference is a final official statement, it must be available from the MSRB. The Issuer shall clearly identify each such other document so included by reference.

(c) The contents, presentation and format of the Annual Filings may be modified from time to time as determined in the judgment of the Issuer to conform to changes in accounting or disclosure principles or practices and legal requirements followed by or applicable to the Issuer or to reflect changes in the business, structure, operations, legal form of the Issuer or any mergers, consolidations, acquisitions or dispositions made by or affecting the Issuer; provided that any such modifications shall comply with the requirements of the Rule.

SECTION 5. Reporting of Specified Events.

The Issuer shall provide (or cause to be provided) notice to the MSRB of the occurrence of any of the following events described in this paragraph 5(a)(1) through paragraph 5(a)(9) with respect to Bonds, in a timely manner but not later than ten business days after the occurrence of the event. The notice shall be in an electric format and be accompanied by such identifying information as is prescribed by the MSRB.

1. Principal and interest payment delinquencies;
2. Unscheduled draws on debt service reserves reflecting financial difficulties;
3. Unscheduled draws on credit enhancements reflecting financial difficulties; †
4. Substitution of credit or liquidity providers, or their failure to perform; †

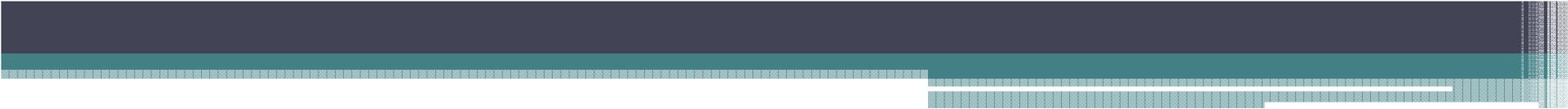
If Applicable:

† *The Issuer has not obtained and does not expect to obtain or provide, any credit enhancements or liquidity providers for the Bonds.*

5. Issuance by the Internal Revenue Service of proposed or final determination of taxability or of a Notice of Proposed Issue (IRS Form 5701 TEB) or issuance of adverse tax opinion;
6. Tender offers;
7. Defeasances;
8. Rating changes; or
9. Bankruptcy, insolvency, receivership or similar event of the obligated person.

Note: for the purposes of the event identified in paragraph 5(a)(9), the event is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent or similar officer for an Obligated Person in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under State or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the Obligated Person, or if such jurisdiction has been assumed by leaving the existing governmental body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the Obligated Person.

(b) The Issuer shall provide (or cause to be provided) to the MSRB notice of the occurrence of any of following events described in this paragraph 5(b)(1) through paragraph 5(b)(6) with respect to Bonds, if material, in a timely manner but not later than ten business days after the occurrence of the event. Such notice shall be in an electric format, and be accompanied by such identifying information as is prescribed by the MSRB.



1. Unless described in paragraph 5(a)(5), other material notices or determinations by the Internal Revenue Service with respect to the tax status of Bonds or other material events affecting the tax status of Bonds;

2. Modifications to rights of Bondholders;

3. Bond calls; †

4. Release, substitution, or sale of property securing repayment of Bonds;

5. Non-payment related defaults;

6. The consummation of a merger, consolidation, or acquisition involving an Obligated Person or the sale of all or substantially all of the assets of the Obligated Person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms; or Appointment of a successor or additional trustee or the change of name of a trustee.

7. Appointment of a successor or additional trustee or the change of name of a trustee.

† Any scheduled redemption of the Bonds pursuant to mandatory sinking fund redemption requirements does not constitute a Specified Event within the meaning of the Rule.

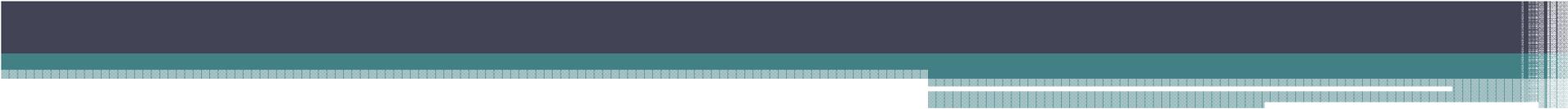
(c) The Issuer acknowledges that it must make a determination whether a Specified Event listed in subsection (b) is material under applicable federal securities laws in order to determine whether a filing is required under subsection (b).

SECTION 6. Termination of Reporting Obligation. The obligations of the Issuer under this Disclosure Undertaking shall terminate upon the legal defeasance, or payment in full, of all of the Bonds. If such termination occurs prior to the final maturity of the Bonds, the Issuer shall give notice of such termination in the same manner as for a Specified Event under Section 5(a) hereof.

SECTION 7. Dissemination Agent. The Issuer may, from time to time, appoint or engage a Dissemination Agent to assist it in carrying out its obligations under this Disclosure Undertaking, and may discharge any such Dissemination Agent, with or without appointing a successor Dissemination Agent. The Dissemination Agent may resign at any time by providing at least 30 days' notice in writing to the Issuer. The Dissemination Agent, if other than the Issuer, shall not be responsible in any manner for the content of any notice or report prepared by the Issuer pursuant to this Disclosure Undertaking. The initial Dissemination Agent shall be the [Issuer].

SECTION 8. Amendment; Waiver. Notwithstanding any other provision of this Disclosure Undertaking, the Issuer may amend or waive any provision of this Disclosure Undertaking, provided that the following conditions are satisfied:

(a) If the amendment or waiver related to the provisions of Sections 3(a), 3(c), 4, or 5, it may only be made in connection with a change in circumstances that arises from a change in legal requirements, change in law, or change in the identity, nature or status of an obligated person with respect to the Bonds, or the type of business conducted;



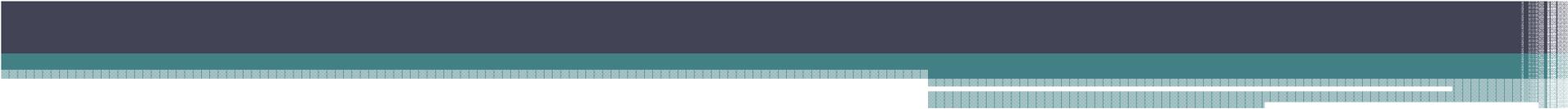
(b) The Disclosure Undertaking, as amended or taking into account such waiver, would, in the opinion of an independent attorney for the Issuer (such as nationally recognized bond counsel), have complied with the requirements of the Rule at the time of the original issuance of the Bonds, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances; and

(c) The amendment or waiver either (i) is approved by the owners of a majority in aggregate principal amount of the Bonds or (ii) does not, in the opinion of the an independent attorney for the Issuer (such as nationally recognized bond counsel), materially impair the interests of the Holders.

In the event of any amendment or waiver of a provision of this Disclosure Undertaking, the Issuer shall describe such amendment in the next Annual Filing, and shall include, as applicable, a narrative explanation of the reason for the amendment or waiver and its impact on the type (or, in the case of a change of accounting principles, on the presentation) of financial information or operating data being presented by the Issuer. In addition, if the amendment relates to the accounting principles to be followed in preparing financial statements, (i) notice of such change shall be given in the same manner as for a Listed Event under Section 5, and (ii) the Annual Filing for the year in which the change is made should present a comparison (in narrative form and also, if feasible, in quantitative form) between the financial statements as prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles.

SECTION 9. Additional Information. Nothing in this Disclosure Undertaking shall be deemed to prevent the Issuer from disseminating any other information, using the means of dissemination set forth in this Disclosure Undertaking or any other means of communication, or including any other information in any Annual Filing or notice of occurrence of a Specified Event, in addition to that which is required by this Disclosure Undertaking. If the Issuer chooses to include any information in any Annual Filing or notice of occurrence of a Specified Event, in addition to that which is specifically required by this Disclosure Undertaking, the Issuer shall have no obligation under this Disclosure Undertaking to update such information or include it in any future Annual Filing or notice of occurrence of a Specified Event.

SECTION 10. Remedy for Breach. This Disclosure Undertaking shall be solely for the benefit of the Holders and Beneficial Owners from time to time of the Bonds. The exclusive remedy for any breach of the Disclosure Undertaking by the Issuer shall be limited, to the extent permitted by law, to a right of Holders and Beneficial Owners to institute and maintain, or to cause to be instituted and maintained, such proceedings as may be authorized at law or in equity to obtain the specific performance by the Issuer of its obligations under this Disclosure Undertaking in a court of competent jurisdiction in _____, California; provided that any Holder or Beneficial Owner seeking to require the Issuer to comply with this Disclosure Undertaking shall first provide at least 30 days' prior written notice to the Issuer of the Issuer's failure, giving reasonable detail of such failure, following which notice the Issuer shall have 30 days to comply. A default under this Disclosure Undertaking shall not be deemed an Event of Default under the Indenture with respect to the Bonds, and the sole remedy under this Disclosure Undertaking in the event or any failure of the Issuer to comply with this Disclosure Undertaking shall be an action to compel performance. No person or entity shall be entitled to recover monetary damages under this Disclosure Undertaking.



SECTION 11. Beneficiaries. This Disclosure Undertaking shall inure solely to the benefit of the Issuer, the Dissemination Agent, the Participating Underwriters, Holders and Beneficial Owners from time to time of the Bonds, and shall create no rights in any other person or entity.

SECTION 12. Record Keeping. The Issuer shall maintain records of all Annual Filings and notices of Specified Events, including the content of such disclosure, the names of the entities with which the such disclosure was filed and the date of filing such disclosure.

SECTION 13. Governing Law. This Disclosure Undertaking shall be governed by the laws of the State of California.

[ISSUER]

By: _____

Its: _____